

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VERNON MONTGOMERY,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 19-2023 (MN)
)	
OFFICER LOCKWOOD, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

At Wilmington, this 6th day of August 2021:

Introduction. Plaintiff Vernon Montgomery (“Plaintiff”), an inmate at the James T. Vaughn Correctional Center in Smyrna, Delaware, filed this action pursuant to 42 U.S.C. § 1983. (D.I. 3). He appears *pro se* and has been granted leave to proceed *in forma pauperis*. (D.I. 8). Pending are Plaintiff’s motion to meet with expected witnesses and letter/motion to compel. (D.I. 45, 58).


Witnesses. Plaintiff’s motion to meet with expected witnesses who appear to be correctional officers will be denied without prejudice. (D.I. 45). Plaintiff seeks an order for permission from the Delaware Department of Correction to meet with eight staff members via video conference. The motion, however, does not identify the potential witnesses or indicate their relevancy to this action.

Motion to Compel. Plaintiff’s motion to compel Defendants to produce video footage of the incident relative to this lawsuit will be denied. (D.I. 58). Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the

importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Fed. R. Civ. P. 26(b).

Defendants respond that they exercised due diligence and attempted to locate the vide/camera footage, and no such footage exists. (D.I. 59). Defendants cannot produce what does not exist.

Conclusion. THEREFORE, IT IS HEREBY ORDERED that, based upon the above discussion, this Court will: (1) DENY WITHOUT PREJUDICE Plaintiff's motion to meet with expected witnesses who appear to be correctional officers (D.I. 45); and (2) DENY Plaintiff's motion to compel Defendants to produce video footage. (D.I. 58).



The Honorable Maryellen Noreika
United States District Judge